

ESTTA Tracking number: **ESTTA412906**Filing date: **06/06/2011**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Julius Samann Ltd.
Granted to Date of previous extension	08/17/2011
Address	Victoria Place, 31 Victoria Street Hamilton, HM 10 BERMUDA
Party who filed Extension of time to oppose	Julius SÃmann Ltd. Julius SÃmann Ltd.
Relationship to party who filed Extension of time to oppose	The name is not being changed. The name was entered without the umlaut over the a ("Ã") because the system rejected the non-ASCII character. The opposer's name is Julius SÃmann Ltd.

Attorney information	ROBERTA S BREN OBLON SPIVAK MCCLELLAND MAIER & NEUSTADT LLP 1940 DUKE STREET ALEXANDRIA, VA 22314 UNITED STATES tmdocket@oblon.com, rbren@oblon.com, ndyson@oblon.com Phone:703-413-3000
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**Applicant Information**

Application No	85189556	Publication date	04/19/2011
Opposition Filing Date	06/06/2011	Opposition Period Ends	08/17/2011
Applicant	D & J Distributing and Manufacturing 1302 Holloway Rd. Holland, OH 43528 UNITED STATES		


**Goods/Services Affected by Opposition**

Class 005. All goods and services in the class are opposed, namely: Auto accessories, namely, air fresheners
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	3126834	Application Date	09/02/2005
Registration Date	08/08/2006	Foreign Priority Date	NONE
Word Mark	BLACK ICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2004/07/16 First Use In Commerce: 2004/07/16 Air fresheners		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ICE BLUE		
Goods/Services	Air fresheners		

Attachments	78706367#TMSN.jpeg ( 1 page )( bytes ) ICEY BLACK - OPPOSITION.pdf ( 13 pages )(307595 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Roberta S. Bren/nmd/
Name	Roberta S. Bren
Date	06/06/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

JULIUS SÄMANN LTD.,

Opposer,

 $\mathbf{v}_i$ 

D & J DISTRIBUTING AND  
MANUFACTURING DBA EXOTICA  
FRESHENERS.

Applicant.

Opposition No.

Appln. Serial No. 85/189,556

Mark: ICEY BLACK

## **NOTICE OF OPPOSITION**

In the matter of the application for registration of the mark ICEY BLACK for goods in International Class 5, Application Serial No. 85/189,556 filed December 2, 2010, which was published at page TM 623 of the April 19, 2011 *Official Gazette* of the United States Patent and Trademark Office (“USPTO”).

JULIUS SÄMANN LTD. (“Opposer”) is a corporation organized and existing under the laws of Bermuda, at Victoria Place, 31 Victoria Street, Hamilton HM 10, Bermuda, and believes that it will be damaged by registration of the mark ICEY BLACK, which is the subject of Application Serial No. 85/189,556, and hereby opposes same.

As grounds for Opposition it is alleged as follows:

1. Upon information and belief, D & J DISTRIBUTING AND MANUFACTURING DBA EXOTICA FRESHENERS (“Applicant”) filed on December 2, 2010 an application based on Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b), to register the

mark ICEY BLACK (hereinafter “Applicant’s Mark”) for “Auto accessories, namely, air fresheners” in International Class 5 (hereinafter “Applicant’s Goods”). The application was assigned Serial No. 85/189,556 by the USPTO.

2. Since a date prior to Applicant’s filing date, Opposer has been, and is now, using the mark BLACK ICE on and in connection with air fresheners.

3. Opposer owns Registration No. 3,126,834, which issued on August 8, 2006, for the mark BLACK ICE for “Air fresheners.” Said registration is valid and subsisting. Printouts from the USPTO’s TARR and Assignment records of Opposer’s pleaded Registration are attached as Exhibit 1, and are provided pursuant to Trademark Rule 2.122(d)(1).

4. Since a date prior to Applicant’s filing date, Opposer has been, and is now, using the mark ICE BLUE on and in connection with air fresheners.

5. Opposer will rely on all of its registered and common law rights in its mark BLACK ICE and all of its common law rights in its mark ICE BLUE (hereinafter “Opposer’s Marks”).

6. Opposer through its predecessors and licensees has used Opposer’s Marks to identify its air fresheners (hereinafter “Opposer’s Goods”), in interstate commerce in the United States, for many years.

7. Opposer, through its licensee, Car-Freshner Corporation, continues to use Opposer’s Marks to identify Opposer’s Goods in interstate commerce in the United States.

8. Upon information and belief, Applicant has not used Applicant’s Mark in commerce on or in connection with Applicant’s Goods prior to December 2, 2010.

9. Applicant’s Mark ICEY BLACK is confusingly similar to Opposer’s BLACK ICE mark.

10. Applicant's Mark ICEY BLACK is confusingly similar to Opposer's ICE BLUE mark.

11. Applicant's Goods in Application Serial No. 85/189,556 are identical to Opposer's Goods.

12. Upon information and belief, Applicant's Goods under Applicant's Mark are intended to be distributed through the same or overlapping channels of trade and to the same classes of purchasers as Opposer's Goods under Opposer's Marks.

13. Applicant's use and registration of Applicant's Mark will enable Applicant to trade upon and utilize the goodwill established by Opposer in Opposer's Marks.

14. Applicant's alleged ICEY BLACK mark so resembles each of Opposer's BLACK ICE and ICE BLUE marks as to be likely, if used in connection with Applicant's proposed goods "auto accessories, namely air fresheners," to cause confusion or mistake or to deceive purchasers resulting in damage and detriment to Opposer and its reputation, all in violation of Section 2(d) of the Trademark Act, 15 USC §1052(d).

15. Upon information and belief, the *bona fides* of Applicant's intent-to-use Applicant's Mark is not apparent from materials of record in the subject application, and Opposer therefore challenges same and leaves Applicant to its proofs with regard to the nature and sufficiency of its intent to use at the time of filing Application Serial No. 85/189,556, and at all times subsequent thereto.

16. Opposer, upon information and belief, avers that it will be damaged by the registration of Applicant's Mark, in that the mark is confusingly similar to each of Opposer's Marks, and will be used in connection with goods identical to Opposer's Goods.

WHEREFORE, Opposer, JULIUS SÄMANN LTD., prays that this Opposition be sustained, and the application for registration of Applicant's Mark be denied.

**POWER OF ATTORNEY**

Opposer has appointed ROBERTA S. BREN, and the following attorneys of the law firm of OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, L.L.P., as its attorneys with full powers of substitution and revocation, to file and prosecute this opposition proceeding and to transact all business in the Patent and Trademark Office in connection herewith:

Norman F. Oblon	Jordan S. Weinstein	Eckhard H. Kuesters
Marvin J. Spivak	Kathleen Cooney-Porter*	Robert T. Pous
Gregory J. Maier	Beth A. Chapman*	Charles L. Gholz
Arthur I. Neustadt	Christopher I. Donahue	Jean-Paul Lavalleye
David J. Kera	Kyoko Imai	Stephen G. Baxter
Jeffrey H. Kaufman	David H. Aleskow*	Richard L. Treanor
Roberta S. Bren	Richard D. Kelly	Steven P. Weihrouch
Jonathan Hudis	James D. Hamilton	Richard L. Chinn

Members of the Bar of Virginia (except as indicated)

\*Member of the Bar other than Virginia

**Please address all correspondence to ROBERTA S. BREN** at OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, L.L.P., 1940 Duke Street, Alexandria, Virginia 22314.

If filed online, the required filing fee of \$300.00 for this Opposition is being submitted through ESTTA. The Director is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 50-2014.

Respectfully submitted,

JULIUS SÄMANN LTD.

By: Roberta S. Bren  
Roberta S. Bren  
OBLON, SPIVAK, MCCLELLAND,  
MAIER & NEUSTADT, L.L.P.  
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Alexandria, Virginia 22314  
(703) 413-3000  
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Counsel for Opposer

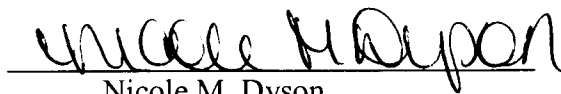
Dated: June 6, 2011

RSB/BAC/cli/nmd {5412096\_1.DOC}

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **NOTICE OF OPPOSITION** was served on Applicant at the correspondence address as identified by the records of the U.S. Patent and Trademark Office this 6<sup>th</sup> day of June, 2011, by sending same, via First Class mail, postage prepaid, to:

D & J DISTRIBUTING AND MANUFACTURING  
1302 HOLLOWAY RD  
HOLLAND, OH 43528-9538

  
\_\_\_\_\_  
Nicole M. Dyson



# **EXHIBIT 1**



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# BLACK ICE

<b>Word Mark</b>	BLACK ICE
<b>Goods and Services</b>	IC 005. US 006 018 044 046 051 052. G & S: Air fresheners. FIRST USE: 20040716. FIRST USE IN COMMERCE: 20040716
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	78706367
<b>Filing Date</b>	September 2, 2005
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	May 16, 2006
<b>Registration Number</b>	3126834
<b>Registration Date</b>	August 8, 2006
<b>Owner</b>	(REGISTRANT) Julius Sämann Ltd. CORPORATION BERMUDA Chancery Hall, 52 Reid Street Hamilton BERMUDA HM12
<b>Attorney of Record</b>	Roberta S. Bren
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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**Serial Number:** 78706367 [Assignment Information](#) [Trademark Document Retrieval](#)

**Registration Number:** 3126834

**Mark**

# BLACK ICE

**(words only):** BLACK ICE

**Standard Character claim:** Yes

**Current Status:** Registered. The registration date is used to determine when post-registration maintenance documents are due.

**Date of Status:** 2006-08-08

**Filing Date:** 2005-09-02

**Transformed into a National Application:** No

**Registration Date:** 2006-08-08

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 115

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)**

**Current Location:** 650 -Publication And Issue Section

**Date In Location:** 2006-08-08

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## LAST APPLICANT(S)/OWNER(S) OF RECORD

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1. Julius Sämann Ltd.

**Address:**

Julius Sämann Ltd.  
Chancery Hall, 52 Reid Street  
Hamilton HM12  
Bermuda

**Legal Entity Type:** Corporation**State or Country of Incorporation:** Bermuda

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**GOODS AND/OR SERVICES**

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**International Class:** 005**Class Status:** Active

Air fresheners

**Basis:** 1(a)**First Use Date:** 2004-07-16**First Use in Commerce Date:** 2004-07-16

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**ADDITIONAL INFORMATION**

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(NOT AVAILABLE)

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2006-08-08 - Registered - Principal Register

2006-05-16 - Published for opposition

2006-04-26 - Notice of publication

2006-03-29 - Law Office Publication Review Completed

2006-03-24 - Assigned To LIE

2006-03-18 - Approved for Pub - Principal Register (Initial exam)

2006-03-17 - Assigned To Examiner

2005-10-24 - Amendment From Applicant Entered

2005-10-05 - Communication received from applicant

2005-10-05 - PAPER RECEIVED

2005-09-12 - New Application Entered In Tram

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**<http://tarr.uspto.gov/servlet/tarr?regser=serial&entry=78706367>

6/6/2011

Roberta S. Bren

**Correspondent**

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